

ESTTA Tracking number: **ESTTA427151**

Filing date: **08/25/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Vineyard 29, LLC		
Entity	LLC	Citizenship	California
Address	2929 Highway 29 St. Helena, CA 95472 UNITED STATES		

Attorney information	Melville Owen Owen, Wickersham & Erickson, P.C. 455 Market St., 19th Flr. San Francisco, CA 94105 UNITED STATES mowen@owe.com, kel@owe.com, tmpparalegal@owe.com, jrhodes@owe.com Phone:415.882.3200
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### Applicant Information

Application No	85332176	Publication date	07/26/2011
Opposition Filing Date	08/25/2011	Opposition Period Ends	08/25/2011
Applicant	Casa Xplendor S.A de C.V. Aldama #819 Col. Centro San Pedro Garza Garcia, 66230 MEXICO		

### Goods/Services Affected by Opposition


Class 033. All goods and services in the class are opposed, namely: Tequila
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2469515	Application Date	05/15/2000
Registration Date	07/17/2001	Foreign Priority Date	NONE
Word Mark	VINEYARD 29 TWENTY-NINE		

Design Mark	<p>VINEYARD 29</p> 
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1996/04/01 First Use In Commerce: 1996/04/01 WINE

Attachments	76048057#TMSN.gif ( 1 page )( bytes ) VIN29-Opposition.PDF ( 5 pages )(493808 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Melville Owen/
Name	Melville Owen
Date	08/25/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the re matter of Trademark Application

Applicant: Casa Xplendor S.A de C.V.  
Serial No.: 85/332,176  
Filed: May 27, 2011  
Mark: 2 9 TWO NINE  
Publication Date: July 26, 2011

Vineyard 29, LLC

Opposer,

v.

Casa Xplendor S.A de C.V.

Applicant.

**NOTICE OF OPPOSITION**

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Vineyard 29, LLC, a California limited liability company (“Opposer”) with an address of 2929 Highway 29, St. Helena, California 95472, believes that it will be damaged by registration of the mark **2 9 TWO NINE** set forth in Application Serial No. 85/332,176, published in the *Official Gazette* on July 26, 2011, for “tequila” in International Class 33, and hereby opposes same.

As grounds for this Opposition, Opposer relies upon its federal registrations and the rights developed by the use of its **29**-formative marks, and alleges on knowledge as to itself and otherwise upon information and belief, as follows:

1. Opposer is the owner of incontestable U.S. Trademark Registration No. 2,469,515 for the mark **VINEYARD 29 (and design)**, with a filing date of May 15, 2000 and first use date of April 1, 1996, and U.S. Trademark Registration No. 3,671,660 for **29**, with a filing date of May 27, 2008 and first use date of April 30, 1995, both in International Class 33 for “wine.” The **VINEYARD 29 (and design)** and **29** marks will be collectively, “Opposer’s **29** Marks.”

2. Opposer began actual and constructive use of Opposer’s **29** Marks in interstate commerce in connection with wines long prior to Applicant’s filing date of May 27, 2011. On information and belief Opposer’s registrations are valid, subsisting, and in full force and effect. As such, the registrations serve as evidence of Opposer’s exclusive right to use Opposer’s **29** Marks. On information and belief, Opposer’s rights are prior to any filing date or date of first use upon which Applicant can rely.

3. Opposer’s **29** Marks have been widely promoted and featured throughout the wine industry for many years. Opposer has expended substantial amounts of time and effort in promoting its goods under its **29** Marks. As a result of such activities, Opposer’s **29** Marks have become well known and favorably received, the relevant public has come to associate Opposer’s **29** Marks with Opposer, and Opposer derives substantial goodwill from such association.

4. On May 27, 2011, Applicant filed an intent-to-use application for the mark **2 9 TWO NINE** for “tequila” in International Class 33 (“Applicant’s Mark”). Opposer objects to registration of Applicant’s Mark.

5. On information and belief, Opposer alleges that the tequila designated by Applicant’s Mark will constitute goods which are substantially related to Opposer’s goods and will be offered in the United States to the same class of customers through the same or similar channels of trade.

6. Applicant's **2 9 TWO NINE** Mark is substantially identical or nearly identical to Opposer's **29** Marks. Based on the similarity of the marks and the overlapping and relatedness of the goods and services, the public is likely to associate the goods offered by Applicant under its **2 9 TWO NINE** Mark with Opposer or Opposer's goods and services, or to believe that Applicant's goods are sponsored, endorsed or licensed by Opposer, or that there is some relationship between Applicant and Opposer. Applicant's **2 9 TWO NINE** Mark so resembles Opposer's **29** Marks as to be likely, when applied to Applicant's Class 33 goods set forth in the application, to cause confusion, mistake, or deception in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d). Any such confusion will result in irreparable damage to Opposer's reputation and goodwill.

7. Further, if Applicant is granted the registration herein opposed, it would thereby obtain at least *prima facie* exclusive right to use its mark. Such registration would be a source of damage and injury to Opposer.

8. Opposer is likely to be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of Applicant's Mark sought to be registered, and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

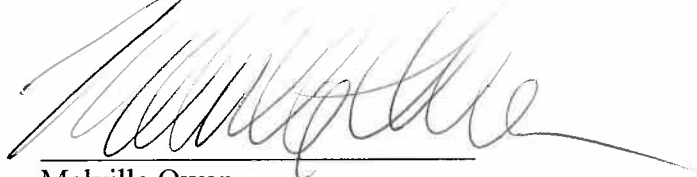
9. For the reasons set forth herein, Opposer believes that Applicant is not entitled to register its mark because of Opposer's prior rights in Opposer's **29** Marks, as set forth above, and the application should be denied in accordance with Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer prays that this opposition be sustained in favor of Opposer and that registration of the trademark **2 9 TWO NINE** shown and specified in Application Serial No. 85/332,176 be refused in accordance with the provisions of the Trademark Act.

OWEN, WICKERSHAM & ERICKSON, P.C.

Dated: August 25, 2011

By:

A handwritten signature in dark ink, appearing to read 'Melville Owen', written over a horizontal line.

Melville Owen  
Kathleen E. Letourneau  
Attorneys for Applicant  
Vineyard 29, LLC

455 Market Street, 19th Floor  
San Francisco, California 94105  
(415) 882-3200

**CERTIFICATE OF SERVICE**

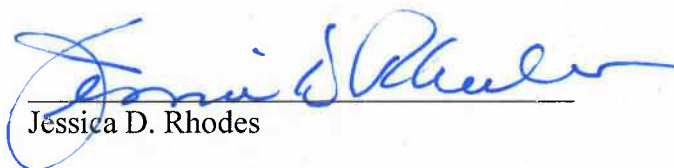
I hereby certify that a true and complete copy of the foregoing

**NOTICE OF OPPOSITION**

has been served on Applicant via International FedEx to the following address:

Casa Xplendor S.A de C.V.  
Aldama #819 Col. Centro  
San Pedro Garza Garcia 66230  
Mexico

Dated: August 25, 2011



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Jessica D. Rhodes